

## REMARKS

The Examiner's Advisory Action mailed August 23, 2005 has been received and its contents reviewed. Applicant would like to thank the Examiner for the consideration given to the above-identified application.

Prior to this Amendment, claims 1, 77-84, 87-90 and 93-102 were pending. By the above actions, independent claims 1 and 77-80 have been amended. Accordingly, claims 1, 77-84, 87-90 and 93-102 are pending for consideration, of which claims 1 and 77-80 are independent. In view of these actions and the following remarks, reconsideration of this application is now requested.

Referring now to the detailed Office Action of April 13, 2005, claims 1 and 102 stand rejected under 35 U.S.C. §103(a) as unpatentable over Yamazaki and Akbar. Further, claims 77-84, 87-90 and 93-96 stand rejected under 35 U.S.C. §103(a) as unpatentable over Yamazaki and Akbar, and further in view of Koyama. Still further, claims 97-101 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Yamazaki, Akbar and Koyama, and further in view of Fukaya et al. (U.S. Patent 5,627,088 – hereafter Fukaya).

In the Advisory Action mailed August 23, 2005, the Examiner continued to apply Akbar in the rejections and asserted that the pending claims are product-by-process claims and that an old or obvious product produced by a new method is not patentable as a product, whether claimed in product-by-process claims or not. In response to the rejections, Applicants have amended independent claims 1 and 77-80, as shown above, to replace the clause reciting a method step with additional physical limitations. Support for the amendments can be found at least in, e.g., Figs. 6D and 7 and reference numerals 721 and 705 in the specification.

Applicants respectfully assert that none of the cited prior art references teach, disclose or suggest a semiconductor active layer comprising a channel forming region, wherein a first region of the floating gate is located in a upper region of the channel forming region, wherein a second region of the control gate is located in the upper region of the channel forming region, and wherein an area of the first region is larger than an area of the second region, in combination with other features in claims 1 and 77-80 of the present invention.

The requirements for establishing a *prima facie* case of obviousness, as detailed in MPEP § 2143 - 2143.03 (pages 2100-122 - 2100-136), are: first, there must be some

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference to combine the teachings; second, there must be a reasonable expectation of success; and, finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. As the cited prior art references do not teach, disclose or suggest each and every claimed feature, the §103(a) rejections are improper.

In view of the amendments and arguments set forth above, Applicants respectfully request reconsideration and withdrawal of all the pending rejections.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with Applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,



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Luan C. Do  
Registration No. 38,434

NIXON PEABODY LLP  
Suite 900, 401 9<sup>th</sup> Street, N.W.  
Washington, D.C. 20004-2128  
(202) 585-8000